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JUN 19 2008

OFFICE OF PETITIONS

In re Application of
Katsumi OCHIAI
Application No. 10/795,765
Filed: March 08, 2004
Attorney Docket No. **FS.20131US0A**

DECISION ON PETITION

This is a decision on the petition filed June 10, 2008 under 37 CFR 1.182, requesting expedited consideration of the petition under 37 CFR 1.181(a) filed March 13, 2008, which is being treated as a petition under 37 CFR 1.137(b) to accept unintentionally abandoned application.

The petition under 37 CFR 1.182 for expedited consideration is **GRANTED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The application became abandoned for failure to timely reply within the meaning of 37 CFR 1.113 to the final Office action, mailed August 22, 2007, which set a shortened statutory period for reply of three (3) months. A three (3) month extension of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned on February 23, 2008.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of \$810.00, and the submission required by 37 CFR 1.114; (2) the petition fee of \$1540.00; and (3) a proper statement of unintentional delay. Accordingly, the reply to the final Office action of August 22, 2007, is accepted as having been unintentionally delayed.

Telephone inquiries related to this decision should be addressed to the Michelle R. Eason at (571)–272-4231.

This application is being referred to Technology Center AU 3617 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Thurman Page
Petitions Examiner
Office of Petitions

may be required, for example, to prevent abandonment. Otherwise, the Applicant's statement would have no meaning. In the present situation, an RCE is clearly required.

Applicant acknowledges that Applicant's "Conditional" RCE could have been more clear, but also note that the MPEP rule regarding the Conditional RCE could also be more clear.

Thus, Applicant submits that the above-noted language from Applicant's February 22, 2008 response is sufficient to be treated as a "Conditional" RCE.

Applicant thus respectfully requests that any abandonment of the present Application be withdrawn.

IN THE ALTERNATIVE, APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION UNDER 37 CFR 1.137(b)

1. For the Petition fee
(X) Other than small entity - \$1,540, please charge to Deposit Account No. 11-1410.
2. Reply
 - a. This is a request for a Request for Continued Examination (RCE) under 37 CFR 1.114. For the Request for Continued Examination fee of \$810 under 37CFR 1.17(e),
(X) please charge Deposit Account No. 11-1410.
 - b. The proposed response and extension fees to the above-noted Office Action in the form of an Amendment:
(X) has been filed previously on February 22, 2008.
3. The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 C.F.R. § 1.137(b) was unintentional.

(X) Please charge any additional fees or credit overpayment to Deposit Account No. 11-1410.

06/18/2008 CKHLOK 00000012 111410 10795765

01 FC:1558 1640.00 DA
02 FC:1801 810.00 DA

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: March 13, 2008

By: /Michael Guiliana/

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MPEP § 706.07(a), ¶ III (C) (page 700-98, 8th ed., rev. 5) indicates that the Patent Office will treat a “conditional” RCE as if an RCE had been filed. In particular, the MPEP states:

If a submission is accompanied by a "conditional" RCE and payment of the RCE fee under 37 CFR 1.17(e) (**i.e., an authorization to charge the 37 CFR 1.17(e) fee to a deposit account in the event that the submission would not otherwise be entered**), the Office will treat the "conditional" RCE and payment as if an RCE and payment of the fee set forth in 37 CFR 1.17(e) had been filed.

MPEP § 706.07(a), ¶ III (C) (emphasis added).

Applicant notes that this appears to be the only mention of a “Conditional RCE” in the entire MPEP. There is no definition of what constitutes a “Conditional” RCE. However, this section appears to give an explanation of an acceptable “Conditional” RCE, as follows:

(i.e., an authorization to charge the 37 CFR 1.17(e) fee to a deposit account in the event that the submission would not otherwise be entered)

Applicant submits that this parenthetical, “i.e.” statement does not include *any express relation to an RCE*. It is, however, *conditional*. On the other hand, there are no indications in the MPEP that show the absolute minimum requirements for a “Conditional” RCE. Finally, Applicant notes that the present requirements for filing RCEs are entirely formalistic. Thus, Applicant submits that the MPEP, by way of this example, allows flexibility in the wording of a conditional RCE and allows for authorizations to deduct fees from deposit accounts to be a “Conditional” RCE.

Applicant’s February 22, 2008 Amendment included an express authorization for the Office to deduct ANY fees, from Deposit Account No. 11-1410. Thus, Applicant’s statement satisfies the requirement of authorization to use a deposit account.

Applicant’s February 22, 2008 Amendment also included the statement that the Office can charge ANY FEES, including any fees for “additional extension of time” from the deposit account. By Applicant’s language, the Office was given broad authorization to deduct fees from the deposit account for ANY purpose, beyond those related to extensions of time.

Applicant’s language is also conditional. As is plain to anyone who reads such responses, Applicant’s statement giving authorization to deduct fees is conditional as to any further fee that